

**REMARKS**

Claims 24-39 are pending. Claim 24 and 33 have been amended. No new matter has been added.

Claims 33-39 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. Claims 24-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,406,477 to Harhen in view of U.S. Patent No. 7,451,065 to Pednault.

**Rejection of Claims 33-39 under 35 U.S.C. § 112**

Claims 33-39 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. More particularly, the Examiner asserts that it is unclear whether the user is claiming the statutory class of a product or a method. Claim 33 has been amended accordingly. Therefore, it is respectfully requested that this rejection be withdrawn.

**Rejection of Claims 24-39 under 35 U.S.C. § 103(a)**

Claims 24-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harhen in view of Pednault. This rejection is respectfully traversed.

On page 3 of the Office Action, the Examiner asserts that the “recitation ‘measuring a business initiative using test sites and non-test sites’ has not been given patentable weight because the recitation occurs in the preamble.” Accordingly, claims 24 and 33 have been amended to recite this feature in the body of the claims. As previously discussed, Harhen recites building models generally based on independent variables for predicting a dependent variable. However, Harhen fails to teach a business initiative, such as a new display in a business location, using test sites and non-test sites. In fact, Harhen fails to provide any teaching related to analyzing or developing predictions based on business tests. In contrast, amended claims 24 and 33 recite the ability to take a tested action and build models to predict impact on non-test sites.

Pednault fails to cure the deficiencies of Harhen. On page 9 of the Office Action, the Examiner cites to cols. 8 and 73 of Pednault for teachings of claimed features. However, none of these citations, nor the remainder of Pednault, teach the measurement of a business initiative

using test sites and non-test sites. The cited portions of Pednault discuss segmentation-based predictive models and selecting derived variables from an order list. So neither Harhen nor Pednault, alone or in combination, teach each and every limitation of claims 24 and 33.

Harhen and Pednault also fail to teach “wherein the non-test group sites includes a set of control group sites and wherein the list of the attributes ranked based on each attribute's impact on the test site performance values is generated by the server based on comparisons between test site fragments and corresponding control group site fragments, wherein each fragment is generated by the server based on each respective site's attribute value and performance value,” as recited in claim 32, and “wherein the non-test group sites includes a set of control group sites and wherein the program code for determining the impact of each of the attributes on performance values of the test sites during the test period includes: program code for segmenting the test sites into fragments based on a selected attribute and the performance value for the test sites, program code for segmenting the control group sites into fragments based on the selected attribute and the performance value for the control group sites, and program code for determining the strength of the relationship between the selected attribute and the test site performance value,” as recited in claim 36.

In an exemplary embodiment of claims 32 and 36, a bank may test a new radio advertisement at 25 branches in Atlanta. The performance of the radio advertisement at those test branches is compared to control branches in Charlotte that were not tested with the new radio advertisement. The segmentation of the test sites refers to a review of the 25 Atlanta branches and trying to understand whether the radio advertisement worked especially well in certain branches, e.g., those in higher income areas or lower income areas. When looking at the higher income branches in Atlanta, those branches are compared to the higher income Charlotte branches, not all Charlotte branches. As recited in the pending claims, the control group is split into fragments and the test fragments are compared to similarly situated control fragments for any particular attribute being analyzed (e.g., income). *See, e.g.,* Figs. 7 and 10.

On page 12 of the Office Action, the Examiner asserts that Pednault teaches the features of claims 32 and 36. More specifically, the Examiner cites to col. 51, lines 10-25, and asserts that Pednault teaches that non-test group sites include a set of control group sites and performance values are generated by the server based on comparisons between test site fragments and corresponding control group segments, wherein each fragment is generated by the

server based on each respective site's attribute value and performance value. However, Pednault, especially in the cited portion, does not teach this feature. This citation is reproduced below:

were allowed to be selected at the reference node, and if the maximum number of allowed alternative decompositions were decreased by one for each level of the tree below the reference node until the maximum number of allowed alternative decompositions reached one, then the number of nodes created via top-down tree building would increase by a factor of at most  $k_1$  factorial (i.e.,  $k_1!$ ) compared to selecting the single best alternative decomposition at block 314. Alternatively, if a maximum of  $k_1$  alternative decompositions were allowed to be selected at the reference node, and if the maximum number of allowed alternative decompositions were decreased by a factor of for each level of the tree below the reference node until the maximum number of allowed alternative decompositions reached one, then the number of nodes created via top-down tree building would increase by a factor of at most

This particular section of Pednault discusses how many leafs should be considered at each node in a decision tree. Referring to FIG. 21 of Pednault, reproduced below, "a" is a node that has leaf "b" and "c," and leaf "c" has leaf "d" and leaf "e."

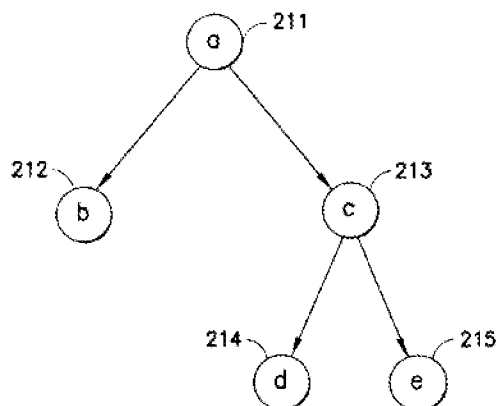


FIG.21

Referring back to the Examiner's citation, Pednault constrains the number of leafs considered at each node so that the set of possible solutions remains more constrained. Such a discussion has no relation to test site versus control site modeling. The Examiner's conclusory assertion is not

based on the teachings of Pednault and are not germane to the pending claims. Harhen, as the Examiner suggests, fails to cure the deficiencies of Pednault. Thus, neither Harhen nor Pednault, alone or in combination, teach each and every limitation of claims 32 and 36.

Therefore, Harhen and Pednault, alone or in combination, fail to teach each and every element of claims 24-39. Because claims 24 and 33 are believed to be allowable, claims 25-32 and 34-39 are also believed to be allowable. Thus, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

In view of the forgoing remarks/arguments, each of the claims in the application is believed to be in condition for immediate allowance. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection and to pass the application to issue. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. No additional fees are believed due; however, the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 50-4402.

Respectfully submitted,

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